IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

OP.No. 10715 of 2003(A)

PETITIONER:

C.F.RAJU, AGED 45 YEARS, SON OF
FRANCIS, CHUMGATH HOUSE, CRASH ROAD,
VAZHAKKALA, VAZHAKKALA VILLAGE, KANAYANNUR
TALUK.

BY ADV. SRI.P.T.SEBASTIAN
SRI.K.MATHEW FRANCIS
SRI.K.M.SUBIAR

RESPONDENTS:

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1. THE DISTRICT COLLECTOR, ERNAKULAM,
KAKKANADU, COCHIN-30.

2. THE TAHSILDAR, TALUK OFFICE,
KANAYANNUR, ERNAKULAM, COCHIN-11.

3. THE VILLAGE OFFICER, VAZHAKKALA VILLAGE
OFFICE, VAZHAKKALA.

BY G.P. SRI.K.P.PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.18515/2003 IN OP NO.10715/2003

DISMISSED:

17.12.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE PHOTOCOPY OF PROCEEDINGS DT.20.10.2002.

P2: TRUE PHOTOCOPY OF RR NOTICE DT.25.3.03.

P3: TRUE PHOTOCOPY OF INVITATION CARD DT.14.5.97.

P4: TRUE PHOTOCOPY OF CERTIFICATE ISSUED BY THE SECRETARY, SPL. GRADE PANCHAYATH DT.20.4.96.

P5: TRUE PHOTOCOPY OF TELEPHONE BILL DT.1.1.98 IN RESPECT OF TELEPHONE NO.422052.

P6: TRUE PHOTOCOPY OF LETTER DT.21.4.97 SENT BY PETITIONER TO SECRETARY, THRIKKAKARA GRAMA PANCHAYAT.

P7: TRUE PHOTOCOPY OF INVOICE BOOK WITH CONSUMER NO.20684 FROM 20.10.97.

P8: TRUE PHOTOCOPY OF PROCEEDINGS E.E.TRIPUNITHURA DT.19.8.97.

RESPONDENT'S EXHIBITS:

R2(a): TRUE COPY OF RETURN FILED BY PETITIONER DT.24.5.99.

R2(b): TRUE COPY OF REPORT SUBMITTED BY THE VILLAGE OFFICER DT.22.3.2001.

R2(c): TRUE COPY OF SKETCH PREPARED BY VILLAGE OFFICER DT.22.3.2001.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.10715 of 2003

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Dated this the 17th day of December, 2007.

JUDGMENT

The petitioner is challenging assessment and recovery proceedings for recovery of arrears of luxury tax in respect of a residential building constructed by the petitioner. The plinth area of the building is admittedly 344.56 sq. metres which attracts luxury tax under Section 5A of the Building Tax Act. The petitioner's case is that construction of the building was completed on 24.5.1997. However, the Tahsildar has filed counter affidavit along with copy of the return submitted by the petitioner wherein petitioner has in the return filed declared that construction of the building was completed on 24.5.1999 and petitioner started occupying it on 24.5.1999 itself. Government Pleader rightly pointed out that assessments are based on return and if return is accepted, there is no scope for enquiry and hearing. In other words, assessment can be completed based on facts verified to be true by the petitioner. Since petitioner himself has stated in the return that construction of the building was completed only on 24.5.1999, the petitioner is liable to pay luxury tax as liability is attracted on all residential buildings with plinth area of 278.7 sq. metres or above,

construction of which are completed after 1.4.1999. Even though there is no scope for considering the evidence against admission in the return verified to be true by the petitioner, I have gone through the document produced. The claim of completion of construction of the building on 24.5.1997 based on invitation for house warming ceremony is unbelievable because Ext.P8 which is an approval for house electricity connection, shows that proposal for drawing underground able was made only on 19.8.1997. If the scheme for electric connection itself was considered by the KSEB only on 19.8.1997, then it would be impossible for the petitioner to start occupying the building after completion of construction on 24.5.1997 as claimed by him. Moreover, Ext.P4 issued by the Thrikkakara Grama Panchayat which is obtained at the time of commencement of construction of building stating that no previous permission of the Panchayat is required for construction or reconstruction of a residential building in the Panchayat area was issued on 20.4.1996. The construction of the petitioner's house which is around 3500 sq. ft. would have been started only in April 1996 if Ext.P4 is to be believed. It is unlikely that the entire construction of such a big building would have been completed in the course of an year and petitioner started residing there. In the circumstances and in view of the statement by the petitioner in the return submitted by him that the

construction of the building was completed only on 24.5.1999, there is no s ope for interference with the assessment and demand of luxury tax. The W P. is therefore dismissed as devoid of any merit.

C.N.RAMACHANDRAN NAIR
Judge

pms